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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

16 MEGAN SCHMITT, DEANA
17 REILLY, CAROL ORLOWSKY, and
STEPHANIE MILLER BRUN,
18 individually and on behalf of
19 themselves and all others similarly
situated,

20 Plaintiffs,

21 v.

22 YOUNIQUE, LLC

23 Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**DEFENDANT YOUNIQUE, LLC'S
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF SUMMARY
JUDGMENT**

*Filed Concurrently with Notice of
Motion and Motion for Summary
Judgment; and Declaration of Sascha
Henry in Support Thereof]*

Hearing Date: October 22, 2018
Hearing Time: 1:30 p.m.

The Hon. James V. Selna
Santa Ana, Courtroom 10C

SACC filed: January 4, 2018
Trial Date: February 19, 2019

28 **[PUBLIC REDACTED VERSION]**

In accordance with Local Rule 56-1, in support of its Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, defendant Younique, LLC (“Younique”) offers the following statement of uncontroverted facts and conclusions of law.

UNCONTROVERTED FACTS

Issue One: Reilly Lacks Standing To Bring A Claim Under Florida's Deceptive And Unfair Trade Practices Act.

No.	Uncontroverted Fact	Evidence
1	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 67:12-18

Issue Two: Reilly Cannot Establish The Causation Required Under Florida's Deceptive And Unfair Trade Practices Act.

No.	Uncontroverted Fact	Evidence
1	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 67:12-18
2	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 149:2-11; <i>see also</i> 43:24-44:10
3	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 134:21-135:9
4	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 153:19-154:15

Issue Three: Reilly Lacks Evidence of Damages Recoverable Under Florida's Deceptive And Unfair Trade Practices Act.

No.	Uncontroverted Fact	Evidence
3	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 134:21-135:9
4	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 153:19-154:15
5	[REDACTED]	Henry Decl., ¶ 5, Ex. A, Reilly Tr., 27:15-29:1; 58:22-25

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2	6	In response to written discovery seeking documents that support her damages, Reilly objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 36, Ex. FF; Response Nos. 9, 16, 17, 20, 21, 24-27
3	7		Henry Decl., ¶ 41, Ex. KK, May Report
4	8		Henry Decl., ¶ 41, Ex. KK, May Report

8
9 Issue Four: Plaintiff Orlowsky Lacks Standing To Bring Claims Under
10 Tennessee Law.

No.	Uncontroverted Fact	Evidence
11	9	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 122:11-123:11.

14 Issue Five: Plaintiff Orlowsky Was Required To, But Did Not, Give Pre-Suit
15 Notice Of Her Warranty Claims.

No.	Uncontroverted Fact	Evidence
16	10	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 37:23-38:1; Ex. E, PL0006-0008
17	11	Plaintiff Schmitt gave pre-suit notice only as to her California state law claims.
18		Henry Decl., ¶ 9, Ex. E, PL0006-0008

21 Issue Six: Orlowsky Does Not Have Standing To Bring The Claims Alleged
22 In The Operative Complaint.

No.	Uncontroverted Fact	Evidence
23	12	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 131:9-25
24	13	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 92:18-93:5
25	14	Henry Decl., ¶ 6, Ex. B,

1		Orlowsky Tr., 131:9-25
2	15	Henry Decl., ¶ 6, Ex. B, 31:12-32:7; 79:16-80:4; 112:7-14; 195:3-7
3		
4		

Issue Seven: Orlowsky Lacks Evidence That The Label Caused Her Damage.

No.	Uncontroverted Fact	Evidence
12		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 131:9-25
13		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 92:18-93:5
14		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 131:9-25
15		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 31:12-32:7; 79:16-80:4; 112:7-14; 195:3-7
16		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 31:12-32:7
17		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 195:3-7

Issue Eight: Orlowsky Lacks Evidence Of Damages Recoverable Under Her Claims.

No.	Uncontroverted Fact	Evidence
18		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 81:18-20
19	In response to written discovery seeking documents that support her damages, she objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 37, Ex. GG, Responses 9, 16, 17, 20, 21, 24-27
20		Henry Decl., ¶ 41, Ex. KK,

1		May Report
2	8	Henry Decl., ¶ 41, Ex. KK, May Report

3
4 Issue Nine: Plaintiff Schmitt Lacks Standing To Bring Her Claims Based On
5 Alleged Mislabeling.

6	No.	Uncontroverted Fact	Evidence
7	21		Henry Decl., ¶ 7, Ex. C, (Schmitt Tr.) 32:19-33:13; 41:2-44:8
8			
9	22		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 32:19-33:13; 41:2- 42:6
10			
11	23		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 47:2-48:1; <i>see</i> <i>also</i> 39:19-40:6; 102:18-104:2
12			
13			

14 Issue Ten: Schmitt Has No Evidence Of Causation.

15	No.	Uncontroverted Fact	Evidence
16	21		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 32:19-33:13; 41:2- 44:8
17			
18	22		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 32:19-33:13; 41:2- 42:6
19			
20	23		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 47:2-48:1; <i>see</i> <i>also</i> 39:19-40:6; 102:18-104:2
21			
22			

23 Issue Eleven: Schmitt Has No Evidence Of Her Damages.

24	No.	Uncontroverted Fact	Evidence
25	24		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 129:5-130:1
26			
27	25		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 128:10-17
28			
	26		Henry Decl., ¶ 7, Ex. C,

1			Schmitt Tr., 52:10-22; 55:5-8
2	27		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 52:10-22; 55:5-8
3			
4	28	In response to written discovery seeking documents that support her damages, Schmitt objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 39, Ex. II
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6			
7			
8	29		Henry Decl., ¶ 41, Ex. KK, May Report
9	8		Henry Decl., ¶ 41, Ex. KK, May Report
10			

Issue Twelve: Brun's Ohio Consumer Sales Practices Act Claim Is Time-Barred.

No.	Uncontroverted Fact	Evidence
30	The Lash Enhancer was last sold in June 2015.	Dkt. 80-1 (Mot. Class Cert.), 8:25-9:3 (acknowledging same); Dkt. 58, SAC, ¶ 4
31	The original complaint was filed on August 14, 2017.	Dkt. 1 (original complaint).
32	Brun's evidence of purchases show they all occurred more than 2 years before the original complaint was filed.	Henry Decl., ¶ 9, Ex. E (PL00002) and Henry Decl., ¶¶ 10, 14-20, Exs. F, J-P

Issue Thirteen: Brun Lacks Evidence That The Alleged Breach of Warranty And Alleged Breach of the OCSA Caused Her Harm.

No.	Uncontroverted Fact	Evidence
33		Henry Decl., ¶ 8, Ex. D, (Brun Tr.,) 91:5-18; 166:24-167:6
34		Henry Decl., ¶ 8, Ex. D, Brun Tr., 158:15-161:3; 234:4-20; 279:21-280:8
35		Henry Decl., ¶ 8, Ex. D, Brun Tr., 308:13-309:1

Issue Fourteen: Brun Lacks Evidence Of Damages Recoverable Under Her Claims.

No.	Uncontroverted Fact	Evidence
36	[REDACTED]	Henry Decl., ¶ 8, Ex. D, Brun Tr., 50:7-16.
37	In response to written discovery seeking documents that support her damages, she objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 40, Ex. JJ, Responses 9, 16, 17, 20, 21, 24-27.
38	[REDACTED]	Henry Decl., ¶ 41, Ex. KK, May Report
8	[REDACTED]	Henry Decl., ¶ 41, Ex. KK, May Report

Issue Fifteen: Orlowsky’s Magnuson-Moss Warranty Act Claim Fails For The Same Reasons Her Implied Warranty Claim Fails.

No.	Uncontroverted Fact	Evidence
8	[REDACTED]	Henry Decl., ¶ 41, Ex. KK, May Report
10	[REDACTED]	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 37:23-38:1; Ex. E, PL0006-0008
11	Plaintiff Schmitt gave pre-suit notice only as to her California state law claims.	Henry Decl., ¶ 9, Ex. E, PL0006-0008
12	[REDACTED]	Henry Decl., ¶ 6, Orlowsky Tr., Ex. B, 131:9-25
13	[REDACTED]	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 92:18-93:5
14	[REDACTED]	Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 131:9-25
15	[REDACTED]	Henry Decl., ¶ 6, Ex. B,

1			Orlowsky Tr., 31:12-32:7; 79:16-80:4; 112:7-14; 195:3-7
2			
3	16		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 31:12-32:7
4	17		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 195:3-7
5			
6	18		Henry Decl., ¶ 6, Ex. B, Orlowsky Tr., 81:18-20
7			
8			
9	19	In response to written discovery seeking documents that support her damages, she objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 37, Ex. GG, Responses 9, 16, 17, 20, 21, 24-27
10			
11			
12	20		Henry Decl., ¶ 41, Ex. KK, May Report
13			

Issue Sixteen: Schmitt’s Magnuson-Moss Warranty Act Claim Fails For The Same Reasons As Her Implied Warranty Claims.

No.	Uncontroverted Fact	Evidence
8		Henry Decl., ¶ 41, Ex. KK, May Report
21		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 32:19-33:13; 41:2-44:8
22		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 32:19-33:13; 41:2-42:6
23		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 47:2-48:1; <i>see also</i> 39:19-40:6; 102:18-104:2
24		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 129:5-130:1
25		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 128:10-17
26		Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 52:10-22; 55:5-8

1		
2	27	Henry Decl., ¶ 7, Ex. C, Schmitt Tr., 52:10-22; 55:5-8
3		
4	28	In response to written discovery seeking documents that support her damages, Schmitt objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”
5		Henry Decl., ¶ 39, Ex. II
6		
7		
8	29	Henry Decl., ¶ 41, Ex. KK, May Report
9		

Issue Seventeen: Brun’s Magnuson-Moss Warranty Act Claim Fails For The
Same Reasons As Her Implied Warranty Claims.

No.	Uncontroverted Fact	Evidence
8		Henry Decl., ¶ 41, Ex. KK, May Report
33		Henry Decl., ¶ 8, Brun Tr., Ex. D, 91:5-18; 166:24-167:6
34		Henry Decl., ¶ 8, Ex. D, Brun Tr., 158:15-161:3; 234:4-20; 279:21-280:8
35		Henry Decl., ¶ 8, Ex. D, Brun Tr., 308:13-309:1
36		Henry Decl., ¶ 8, Ex. D, Brun Tr., 50:7-16.
37	In response to written discovery seeking documents that support her damages, she objected, stating that she would “comply with [the rules and case management order] governing disclosure of expert information.”	Henry Decl., ¶ 40, Ex. JJ, Responses 9, 16, 17, 20, 21, 24-27.
38		Henry Decl., ¶ 41, Ex. KK, May Report

Issue Eighteen: Plaintiffs Are Not Entitled To Equitable Relief.

No.	Uncontroverted Fact	Evidence
39	Plaintiffs seek money damages and have not articulated any reason why their remedies at law would not be adequate were they to prevail.	Dkt. 58, SAC; Dkt. 80-1, Mot. Class Cert, 26:16-29:11

CONCLUSIONS OF LAW

1. Reilly lacks standing to bring her FDUTPA claim because [REDACTED]

[REDACTED] Ex. A, Reilly Tr., 67:12-18; *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006); *Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007).

2. Reilly cannot prove the causation element of her FDUTPA claim. Ex. A, Reilly Tr., 43:24-44:10; 67:12-18; 134:21-135:9; 149:2-11; 153:19-154:15; *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006); *Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007).

3. Reilly has no recoverable damages. Ex. A, Reilly Tr., 27:15-29:1; 58:22-25; 134:21-135:9; 153:19-154:15; Ex. FF; Ex. KK; *Baptist Hosp., Inc. v. Baker*, 84 So.3d 1200, 1204-05 (Fla. 1st DCA 2012).

4. Younique is entitled to summary judgment on Reilly's FDUTPA claim. Ex. A, Reilly Tr., 27:15-29:1; 43:24-44:10; 58:22-25; 67:12-18; 134:21-135:9; 149:2-11; 153:19-154:15; Ex. FF; Ex. KK; *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006); *Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007); *Baptist Hosp., Inc. v. Baker*, 84 So.3d 1200, 1204-05 (Fla. 1st DCA 2012).

5. Younique is entitled to summary judgment on Orlowsky's Tennessee law claims because [REDACTED]

[REDACTED] Ex. B, (Orlowsky Tr.) 122:11-123:11; *United Food & Commer. Workers Local 1776 & Participating Employers Health & Welfare Fund v. Teikoku Pharma*

1 *USA, Inc.*, 74 F.Supp.3d 1052, 1078-79 (N.D. Cal. 2014).

2 6. Younique is entitled to summary judgment on Orlowsky's warranty
3 claims because [REDACTED] Ex. B, 37:23-38:1; Ex. E,
4 PL0006-0008; Tenn. Code Ann. § 47-2-607(3)(a); *Siriano v. Goodman Mfg. Co.*,
5 *L.P.*, 2015 U.S. Dist. LEXIS 191458, *21-22 (S.D. Ohio Aug. 18, 2015); *Rysewyk v.*
6 *Sears Holdings Corp.*, 2015 U.S. Dist. LEXIS 169124, *12-13 (N.D. Ill. Dec. 18,
7 2015); *Preston v. Manchester*, 1990 Tenn. App. LEXIS 625, *33 (Aug. 31. 1990).

8 7. Orlowsky does not have standing to bring the claims that are alleged in
9 the complaint. Ex. B, 92:18-93:5; 112:7-14; 131:9-25; *Smith v. TimberPro Inc.*,
10 2017 Tenn. App. LEXIS 163, *11-12 (Mar. 9, 2017); *Bearden v. Honeywell Int'l,*
11 *Inc.*, 2010 U.S. Dist. LEXIS 83996, *14 (M.D. Tenn. Aug. 16, 2010); *Preston v.*
12 *Manchester*, 1990 Tenn. App. LEXIS 625, *33 (Aug. 31. 1990); *ProductiveMD,*
13 *LLC v. 4UMD, LLC*, 821 F.Supp.2d 955, 967 (M.D. Tenn. 2011).

14 8. Orlowsky lacks evidence that the label caused her any damage. Ex. B,
15 31:12-32:7; 112:7-14; 79:16-80:4; 195:3-7; *Smith v. TimberPro Inc.*, 2017 Tenn.
16 App. LEXIS 163, *11-12 (Mar. 9, 2017); *Bearden v. Honeywell Int'l, Inc.*, 2010
17 U.S. Dist. LEXIS 83996, *14 (M.D. Tenn. Aug. 16, 2010); *Preston v. Manchester*,
18 1990 Tenn. App. LEXIS 625, *33 (Aug. 31. 1990); *ProductiveMD, LLC v. 4UMD,*
19 *LLC*, 821 F.Supp.2d 955, 967 (M.D. Tenn. 2011).

20 9. Orlowsky lacks evidence of damages recoverable under her claims.
21 Ex. B, 81:18-20; Ex. GG, Ex. KK; *Smith v. TimberPro Inc.*, 2017 Tenn. App.
22 LEXIS 163, *11-12 (Mar. 9, 2017); *Bearden v. Honeywell Int'l, Inc.*, 2010 U.S.
23 Dist. LEXIS 83996, *14 (M.D. Tenn. Aug. 16, 2010); *Preston v. Manchester*, 1990
24 Tenn. App. LEXIS 625, *33 (Aug. 31. 1990); *ProductiveMD, LLC v. 4UMD, LLC*,
25 821 F.Supp.2d 955, 967 (M.D. Tenn. 2011); *Audio Visual Artistry v. Tanzer*, 403
26 S.W.3d 789, 809 (2012).

27 10. Younique is entitled to summary judgment on Orlowsky's express and
28 implied warranty claims, and TCPA claim. Ex. B, 31:12-32:7; 79:16-80:4; 81:18-

20; 112:7-14; 131:9-25; 195:3-7; Ex. GG, Ex. KK; *Smith v. TimberPro Inc.*, 2017
Tenn. App. LEXIS 163, *11-12 (Mar. 9, 2017); *Bearden v. Honeywell Int'l, Inc.*,
2010 U.S. Dist. LEXIS 83996, *14 (M.D. Tenn. Aug. 16, 2010); *Preston v.*
Manchester, 1990 Tenn. App. LEXIS 625, *33 (Aug. 31. 1990); *ProductiveMD,*
LLC v. 4UMD, LLC, 821 F.Supp.2d 955, 967 (M.D. Tenn. 2011); *Audio Visual*
Artistry v. Tanzer, 403 S.W.3d 789, 809 (2012).

11. Schmitt lacks standing to bring her claims. Ex. C, 39:19-40:6; 41:5-
44:8; 47:2-48:1; 102:18-104:2; 129:5-130:1; *Lavie v. Procter & Gamble Co.*, 105
Cal.App.4th 496, 508 (2003); *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th 310, 326
(2011); *In re Tobacco II Cases*, 46 Cal.4th 298, 326 (2009); *Sateriale v. R.J.*
Reynolds Tobacco Co., 697 F.3d 777, 793-94 (9th Cir. 2012); *Viggiano v. Hansen*
Natural Corp., 944 F.Supp.2d 877, 893 (C.D. Cal. 2013); *Sandoval v. Pharmacare*
US, Inc., 730 Fed.Appx. 417, 419 (9th Cir. 2018); *Hadley v. Kellogg Sales Co.*, 273
F.Supp.3d 1052, 1096 (N.D. Cal. Aug. 10, 2017).

12. Schmitt has no evidence of causation. Ex. C, 39:19-40:6; 41:5-44:8;
47:2-48:1; 102:18-104:2; 129:5-130:1; *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th 310,
326 (2011); *In re Tobacco II Cases*, 46 Cal.4th 298, 326 (2009); *Sateriale v. R.J.*
Reynolds Tobacco Co., 697 F.3d 777, 793-94 (9th Cir. 2012); *Sandoval v.*
Pharmacare US, Inc., 730 Fed.Appx. 417, 419 (9th Cir. 2018); *In re ConAgra*
Foods, Inc., 90 F.Supp.3d 919, 1007 (C.D. Cal. 2015).

13. Schmitt has no evidence of her damages. Ex. C, 52:10-22; 55:5-8;
128:10-17; Ex. II; Ex. KK; *In re Vioxx Class Cases*, 180 Cal.App.4th 116, 130-31
(2009); .” *Chowning v. Kohl's Dep't Stores, Inc.*, 2018 U.S. App. LEXIS 16336, *2-
3 and n.1 (9th Cir. June 18, 2018); Cal. Comm. Code § 2714.

14. Younique is entitled to summary judgment on Schmitt's claims. Ex. C,
39:19-40:6; 41:5-44:8; 47:2-48:1; 52:10-22; 55:5-8; 102:18-104:2; 129:5-130:1;
128:10-17; Ex. II; Ex. KK; *Lavie v. Procter & Gamble Co.*, 105 Cal.App.4th 496,
508 (2003); *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th 310, 326 (2011); *In re Tobacco*

1 *II Cases*, 46 Cal.4th 298, 326 (2009); *Sateriale v. R.J. Reynolds Tobacco Co.*, 697
2 F.3d 777, 793-94 (9th Cir. 2012); *Viggiano v. Hansen Natural Corp.*, 944 F.Supp.2d
3 877, 893 (C.D. Cal. 2013); *Sandoval v. Pharmacare US, Inc.*, 730 Fed.Appx. 417,
4 419 (9th Cir. 2018); *Hadley v. Kellogg Sales Co.*, 273 F.Supp.3d 1052, 1096 (N.D.
5 Cal. Aug. 10, 2017); *Sandoval v. Pharmacare US, Inc.*, 730 Fed.Appx. 417, 419
6 (9th Cir. 2018); *In re ConAgra Foods, Inc.*, 90 F.Supp.3d 919, 1007 (C.D. Cal.
7 2015); *In re Vioxx Class Cases*, 180 Cal.App.4th 116, 130-31 (2009); .” *Chowning*
8 *v. Kohl's Dep't Stores, Inc.*, 2018 U.S. App. LEXIS 16336, *2-3 and n.1 (9th Cir.
9 June 18, 2018); Cal. Comm. Code § 2714.

10 15. Brun lacks standing as a matter of law to pursue relief under the
11 ODTA. *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 996
12 F.Supp.2d 942, 1006 (S.D. Cal. 2014).

13 16. Brun’s OSCP claim is time-barred. Dkt. 1; Dkt. 80-1 (Mot. Class
14 Cert.), 8:25-9:3 (acknowledging same); Dkt. 58, SAC, ¶ 4; Ex. E (PL00002) and
15 Exs. F, J-P; Ohio Rev. Code § 1345.10(C); *Rosenow v. Shutrump & Assocs.*, 163
16 Ohio App. 3d 500, 504-05 (2005).

17 17. Brun lacks evidence that the alleged violations caused her harm. Ex. D,
18 91:5-18; 158:15-161:3; 166:24-167:6; 234:4-20; 279:21-280:8; 308:13-309:1;
19 *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's, Enters.*, 2015-Ohio-4884,
20 11 (Ct. App. 2015); O.R.C. Ann. § 1302.26; *Bobb Forest Prods. v. Morbark Indus.*,
21 151 Ohio App. 3d 63, 81 (Ct. App. 2002); *Taylor v. Boardman Twp. Local Sch.*
22 *Dist. Bd. of Educ.*, 2009-Ohio-6528, *25 (Ct. App. 2009); *Farris v. ADT, LLC*, 2017
23 U.S. Dist. LEXIS 161003, *10-11 (N.D. Ohio Sept. 29, 2017); *Butler v. Sterling,*
24 *Inc.*, 2000 U.S. App. LEXIS 6419, *13-14 (6th Cir. Mar. 31, 2000).

25 18. Brun lacks evidence of damages recoverable under her claims. Ex. D,
26 50:7-16; Ex. JJ; Ex. KK; O.R.C. Ann. § 1302.88; *Pickens v. Phillips*, 1998 Ohio
27 App. LEXIS 974, *4 (Ct. App. 1998).

28 19. Younique is entitled to summary judgment on Brun’s claims. Ex. D,

50:7-16; 91:5-18; 158:15-161:3; 166:24-167:6; 234:4-20; 279:21-280:8; 308:13-309:1; Ex. JJ; Ex. KK; *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's, Enters.*, 2015-Ohio-4884, 11 (Ct. App. 2015); O.R.C. Ann. § 1302.26; *Bobb Forest Prods. v. Morbark Indus.*, 151 Ohio App. 3d 63, 81 (Ct. App. 2002); *Taylor v. Boardman Twp. Local Sch. Dist. Bd. of Educ.*, 2009-Ohio-6528, *25 (Ct. App. 2009); O.R.C. Ann. § 1302.88; *Pickens v. Phillips*, 1998 Ohio App. LEXIS 974, *4 (Ct. App. 1998) *Farris v. ADT, LLC*, 2017 U.S. Dist. LEXIS 161003, *10-11 (N.D. Ohio Sept. 29, 2017); *Butler v. Sterling, Inc.*, 2000 U.S. App. LEXIS 6419, *13-14 (6th Cir. Mar. 31, 2000).

20. Plaintiffs' MMWA claims fails for the same reasons as Plaintiffs' implied warranty claims fail. *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008); *Tuscany Invs. LLC v. Daimler Trucks North Am. LLC*, 2015 U.S. Dist. LEXIS 109842, *5 (N.D. Cal. Aug. 19, 2015).

21. Younique is entitled to summary judgment on Plaintiffs' equitable claims. *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75-76 (1992); *Mort v. United States*, 86 F.3d 890, 892 (9th Cir. 1996); *Munning v. Gap, Inc.*, 238 F.Supp.3d 1195, 1203 (N.D. Cal. 2017).

Dated: September 17, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

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